

**Matter of Melvin**  
**Del. Supr. No. 372, 2002 (10/7/02)**  
**Board Case No. 22, 2001**

**Disciplinary Rules Involved:** DLRPC 3.4(a), 3.4(c), 8.4(b), 8.4(c), 8.4(d)

**Sanctions Imposed:** 18-Month Suspension

By Order of the Delaware Supreme Court dated October 7, 2002, Gary S. Melvin was suspended from the practice of law in Delaware for eighteen months, effective January 1, 2002. On August 9, 2001, the Office of Disciplinary Counsel (“ODC”) petitioned the Court seeking Mr. Melvin’s interim suspension, on the grounds that Melvin had been indicted on felony and misdemeanor criminal charges. On November 13, 2001, Melvin pled guilty to two misdemeanors: (i) criminal contempt of a protection from abuse (“PFA”) order; and (ii) hindering prosecution. Melvin admitted that he had knowingly violated or refused to obey a PFA order entered by the Family Court. The PFA order had prohibited Melvin from having contact with his wife. Melvin also admitted that, with the intent to hinder police from lodging a misdemeanor criminal charge against him, he had concealed or destroyed his wife’s journal or papers, which may have aided in the lodging of a criminal charge against him.

The Superior Court sentenced Melvin to two years at Level V incarceration suspended entirely for lesser levels of supervision. Following a hearing on November 29, 2001, the Delaware Supreme Court ordered on December 17, 2001 Melvin be suspended from the practice of law in Delaware on an interim basis, effective January 1, 2002, pending final disposition of all attorney disciplinary proceedings.

On April 2, 2002, the Board on Professional Responsibility held a hearing on the ODC’s petition for discipline. Melvin admitted all allegations in the petition, including that his conduct violated five separate rules of the DLRPC. Specifically, Melvin admitted violating Rule 3.4(a) (unlawful destruction or concealment of documents having potential evidentiary value); Rule 3.4(c) (knowing disobedience of an obligation under court rules); Rule 8.4(b) (criminal conduct that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects); Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(d) (conduct that is prejudicial to the administration of justice). The Board recommended that Melvin be suspended.

The Delaware Supreme Court agreed with the Board and determined that Melvin should be suspended from the practice of law for eighteen months retroactive to January 1,

2002, the date his interim suspension began. Melvin may seek reinstatement after June 30, 2003.

As aggravating factors, the Court considered that Melvin had substantial experience in the practice of law and that Melvin's destruction of evidence reflected a dishonest or selfish motive. Additionally, because Melvin's testimony before the Board appeared to be an attempt to reargue his guilty plea, the Court considered in aggravation Melvin's refusal to acknowledge the wrongful nature of his conduct. In mitigation, the Court took into account that Melvin had no prior disciplinary record; that at the time of the misconduct, Melvin had been involved in a highly emotional situation with his wife and children; and that he had pleaded guilty to criminal charges and thus had been subjected to other sanctions.

The Court found:

Melvin's misconduct did not violate any duty to a particular client and did not result in harm to another individual. Nonetheless, his criminal conduct was a violation of his duties to the general public and the legal system. As we previously have noted, even if a lawyer's criminal conduct does not result in an articulable injury to another person, public confidence in the integrity of the legal profession is undermined when any lawyer engages in criminal conduct. As an experienced Public Defender, Melvin held a unique position of public trust and knew or should have known that his criminal conduct would seriously adversely reflect on his own fitness to practice law and on the integrity of the profession.

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Melvin's misconduct, which resulted in his criminal convictions, was deceitful and thus seriously adversely reflects on his honesty and trustworthiness as a lawyer. Melvin's knowing violation of a court order and his destruction of documents with potential evidentiary value were flagrant violations of his professional duties to the legal system and reflect a lack of respect for his position as an officer of the Court. Moreover, Melvin's testimony reflects an undue depreciation of the seriousness of his misconduct. If Melvin's misconduct had occurred within the context of an attorney-client relationship, we might consider a more serious sanction. Under the circumstances, however, we find that an eighteen-month suspension is fair, is sufficient to preserve the public's confidence in the legal profession and the disciplinary system,

and is not inconsistent with the ABA Standards or our prior decisions.